

## ***USE OF ADR IN SECURITIES and FRANCHISING***

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Session No.24  
State Bar Business Law Section  
Committee on ADR  
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### **A. CURRENT TRENDS--Securities**

1. NASD "Forum" of choice.  
Website [www.nasdadr.com](http://www.nasdadr.com)  
Arbitration Code, rules, statistics, etc.  
California cases—waiver of "California Ethics Standards for  
Neutral Arbitrators in Contractual Arbitration"
2. Number of Arbitration claims filed, requests for mediation,  
settlement rates.
3. Types of Securities
4. Damages awarded in arbitration cases--2003: \$132M
5. Punitive damages awarded in 2003--\$30M
6. **CURRENT "ISSUES" IN ARBITRATION OF SECURITIES  
DISPUTES:**
  - "Discovery Abuse"  
"Discovery Guide"  
Sanctions  
Production for evidence verses discovery
  - "Expungement of record in NASD Central Registration  
Depository (CRD)  
Basis for expungement  
Awards verses Stipulated/Consent awards

- “Excessive” prearbitration motions
- Last minute Postponements “requests”
- Other: NASD Employment disputes and....

## **B. CURRENT TRENDS—Franchises**

1. AAA Forum of Choice. Website: [www.adr.org](http://www.adr.org)  
Others arbitral associations....  
Applicable Rules
2. **CURRENT “ISSUES” IN ARBITRATION OF FRANCHISE DISPUTES:**
  - Many franchise agreements provide for single/multi-step “voluntary” ADR process before binding arbitration  
“Agreement to agree?”
  - Scope of arbitration clauses  
**“arising out of or relating to this contract”**  
Arbitration issues verses Court resolved issues
  - Arbitrability...for the courts or arbitrator?  
Applicable Rules  
Poweragent Inc. v. Electronic Data Sys. Inc., 2004 WL 345741 (9th Cir. Feb. 25, 2004)
  - Party-Appointed Arbitrators  
Neutral verses non-neutral  
Applicable/date of arbitration rules—Code of Ethics
  - Discovery Issues  
Motions for Summary Judgment,  
Schlessinger v. Rosenfeld et al 40 Cal. App. 4<sup>th</sup> 1096 (1996)  
See 2003 AAA “Dispute-Wise Management®--  
Improving Economic and Non-Economic Outcomes In Managing Business Conflicts” Report
  - Class Actions or additional parties?  
Garcia v. DirecTV, Inc., No B158570 (Cal. 2d App. Dist. January 28, 2004)

- Venue
  - Will any State statute “control” venue question notwithstanding contract provision providing for venue? See, e.g. Cal. B&P Code §20040.5
  - Role of Federal Arbitration Act (FAA)?
  - Unconscionability issues
- Fees, Costs, Attorney Fees Recovered?
  - See Leamon v. Krajewicz, (F038025, Calif. Ct. of Appeals, Fifth District, filed 2/24/2003), compliance with contractual pre-arbitration provision, i.e. mediation, required in order to obtain attorney fees?
- Should/does the clause “require” the arbitrator to “follow the law?”
  - “Manifest Disregard of the Law” standard?
  - Grounds for appeal in contract?
- Punitive Damages
- Other



**Charles E. Rumbaugh**

Charles E. Rumbaugh is an attorney practicing in commercial/international/government contract law with an emphasis in the private dispute/negotiation related arena as an educator/trainer, professional speaker, arbitrator/mediator as well as private judge. He is a prolific writer/publisher and speaker on substantive and Negotiation/Dispute Resolution topics and has presented advanced/basic negotiation, mediation, and arbitration skills training seminars/workshops in Latin America, Far East, and throughout the United States.

Previously, Mr. Rumbaugh was Corporate Director of Contracts & Pricing for Lear Astronics Corporation where he was responsible for the contracts, pricing, and business management functions. Earlier he was Assistant to Corporate Vice President, Contracts and legal counsel at a major business unit for Hughes Aircraft Company (Hughes Electronics). Before joining Hughes he was Corporations Counsel for the California Department of Corporations.

Mr. Rumbaugh received his Bachelor of Science degree in engineering from UCLA and was employed as an engineer with Westinghouse Electric Corporation prior to attending California Western School of Law where he received a Juris Doctor degree. He also has an ADR Mediation Certificate from Pepperdine University and Center for Conflict Resolution, an Advanced Management Program Certificate from the USC Graduate School of Business and is currently an adjunct professor at several universities for their commercial/business, contract & procurement, international law and ADR/Negotiation programs. He is an advisor to the California State University Contracts and Procurement Certification Program.

His current/past membership on arbitration and mediation panels includes the Large, Complex Case Panel of the American Arbitration Association and National Association of Securities Dealers as well as the following:

- Center for Conflict Resolution panel of Arbitrators/Mediators
- State of California Department of Insurance Qualified Mediator
- State of California Public Works Contract Arbitrator
- EEOC Qualified Mediator
- Los Angeles Superior Court Judge Pro Tem
- Federal Administrative Law Judge, EEOC
- Numerous Federal/State Courts and Administrative Boards and Arbitrator/Mediator panels

Charles Rumbaugh is immediate past Co-Chair of the California State Bar Franchise Law Committee; and currently Vice-Chair of the California State Bar Business Law Section ADR Committee. He is an active member of the American Bar Association (ABA) as well as vice-Chair of the Strategic Alliances Committee of the ABA Public Contract Law Section and founder of the Public Contracting Committee of the ABA Dispute Resolution Section.